Fixed Penalty Notice Enforcement Strategy

June 2014
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1 Enforcement Statement

1.1 St Helens Council’s long term vision is “To make St Helens a modern, distinctive, economic and vibrant borough”. To achieve this through the creation of a better place the Council is working towards making St Helens a cleaner, greener and more accessible town.

1.2 In addition to the direct provision of waste collection, recycling and street cleansing services, the use of fixed penalty notices for environmental crimes such as littering and dog fouling provides a means through which the Council can further improve the cleanliness of the borough’s streets and public areas.

1.3 Enforcement activity through fixed penalty notices provides a means through which local authorities can visibly respond to low level environmental crime. Experiences 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.

1.4 This Fixed Penalty Enforcement Strategy is supplementary to the Council’s Regulatory Services Enforcement Policy and rests beneath the Enforcement Concordat, Regulators Code and Code of Practice for Crown Prosecutors. 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.

1.5 In line with the above guidance the Council will:

- Publish clear standards and guidance
- Publish performance on how we are doing
- Provide information in plain English, or any other language, or format, upon request to those who are affected by our enforcement work
- Investigate complaints only in relation to the process of issuing fixed penalty notices (disputes over the commission of offences will be dealt with in the Magistrates Court)
- Aim to be consistent in our approach at all times.

1.6 In implementing this strategy authorised officers of the Council will seek to work with partners in other enforcement agencies, the voluntary sector, other Council services and local communities whenever appropriate. Both a reactive and pro-active approach to enforcement will be used, in which officers will respond to complaints and focus on known hotspots and areas identified as a result of routine inspection work.
2 Aims, Objectives and Scope of the Strategy

2.1 The aim of the strategy 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.

2.2 The strategy seeks to provide a cost-effective and timely enforcement service that reduces the burden on the Courts and reduces the time between the offence and penalty.

2.3 As part of the delivery of the fixed penalty enforcement regime the strategy seeks to increase public awareness of environmental offences.

2.4 The strategy relates solely to low-level environmental crime and specifically litter, dog fouling and waste offences.

3 General Provisions

3.1 Local authorities are permitted to set their own level of penalty for the specified environmental offences within a range prescribed in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007.

3.2 Local authorities are also permitted to set their own level of penalty discount for early payment, the minimum value of which is prescribed in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007.

3.3 The offences that will be dealt with by way of fixed penalty notice under this policy are set out in the table below. The table also specifies the level of fine to be applied.

<table>
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<tr>
<th>Offence Description</th>
<th>Legislation</th>
<th>Aim of Enforcement</th>
<th>Penalty</th>
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<tr>
<td>Litter</td>
<td>S.88(1) Environmental Protection Act 1990</td>
<td>Cleaner streets and public places. Increased public awareness by publicity associated with fixed penalties</td>
<td>£75 reduced to £50 if paid within 10 calender days</td>
</tr>
<tr>
<td>Street Litter Control Notice or Litter Clearing Notice</td>
<td>S.94A(2) Environmental Protection Act 1990</td>
<td>Cleaner streets and public places by requiring businesses to help clear the litter that they generate. Also the clearance of litter on private land</td>
<td>Amount fixed at £100</td>
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<td>Failure to produce authority (Waste Carriers Licence)</td>
<td>S.5B(2) Control of Pollution (Amendment) Act 1989</td>
<td>Reducing illegal waste disposal by targeting unlicensed carriers, who may fly tip their load</td>
<td>Amount fixed at £300</td>
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<tr>
<td>Failure to provide waste documents</td>
<td>S.34A(2) Environmental Protection Act 1990</td>
<td>Identifying businesses and members of the public, who transfer their waste irresponsibly, which ultimately could be fly tipped</td>
<td>Amount fixed at £300</td>
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<tr>
<td>Offences under Dog Control Orders</td>
<td>S.59(2) Clean Neighbourhoods and Environment Act 2005</td>
<td>To reduce the number of incidents of dog fouling within the borough</td>
<td>£80 reduced to £50 if paid within 10 calender days</td>
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3.4 All officers, who issue fixed penalties shall be appropriately authorised in accordance with the provisions of the Council’s Constitution and under appropriately delegated authority.

3.5 All officers, who issue fixed penalties, shall have undergone appropriate training prior to the commencement of their role.

3.6 In advance of any fixed penalty notices being issued by authorised officers under this strategy, an awareness raising campaign will be implemented to inform the general public of the proposals concerning fixed penalty enforcement.

3.7 A fixed penalty notice shall only be issued for the offence for which they were created and where there is sufficient admissible evidence to support a prosecution. Admissible evidence shall include that witnessed by an authorised officer, as well as, that provided by a reliable witness testimony.

3.8 Where offences are witnessed directly by officers, fixed penalty notices will normally be issued at the time of the incident and suspected offenders interviewed under caution on scene.

3.9 There is no fixed time in which fixed penalty notices must be served, however, to avoid allegations of abuse of process, fixed penalty notices will normally be served within 14 days of the date of offence.

3.10 A fixed penalty notice may be served up to a maximum of 6 months after the offence, where there is a justifiable reason for delay, such as a lengthy fly tip investigation.

3.11 Electoral register lists, DVLA checks and Police support will be used as a means of verifying names and addresses provided by people suspected has having committed an offence. Where it is established that offenders provide false details when requested by authorised officers, then the matter will be taken before the Magistrates Court for an additional offence.

3.12 Offenders will have a period of 14 days to pay the fixed penalty notice issued. All unpaid fixed penalty notices, which have been served appropriately, will be pursued through the courts.

3.13 A fixed penalty notice shall not be issued where it is identified that the offence has been committed by someone that has previously received a fixed penalty for the same offence in the last 3 years. Prosecution proceedings shall be instigated directly in respect of repeat offenders.

3.14 For the purpose of this strategy the term litter is defined as ‘anything that is dropped, thrown, left or deposited that causes defacement, in a public place’. This includes cigarettes, cigars and like products together with chewing gum.

3.15 Littering fixed penalty notices may be issued for fly-tipping offences in respect of small unauthorised deposits of controlled waste, equating up to one standard sized refuse sack of waste. An element of discretion may be used by the investigating officer.
3.16 All recipients of a fixed penalty notice for an environmental offence shall be offered the opportunity to appeal within 14 days to the Chief Environmental Health Officer through a fair, transparent and consistent appeals process. Full details of all appeals and decisions shall be recorded and appellants will be informed of the decision within 10 working days.

3.17 The Chief Environmental Health Officer shall have the authority to determine whether or not an appeal against a fixed penalty notice is successful.

3.18 Where an appeal is refused the appellant shall be informed within 10 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 the letter notifying the offender of the results of the decision.

3.19 The Chief Environmental Health Officer and Principal Environmental Health Officers shall have the authority to cancel fixed penalty notices.

3.20 Fixed penalty notices may only be cancelled in the following circumstances:

(a) Where a person issued with a fixed penalty notice falsely provides the identity details of another person, and that person successfully challenges the notice on that basis; or
(b) Where further information comes to light about the personal circumstances of the recipient of a fixed penalty notice, who it later transpires, is 'vulnerable'.

3.21 Fixed penalty notices may not be cancelled, but may be withdrawn in the following circumstances:

(a) Where the fixed penalty notice has been served incorrectly
(b) Where it subsequently transpires that the evidence is not sufficient to support a prosecution
(c) Where an appeal by the recipient of the fixed penalty notice is successful, other than for circumstances described in paragraph 3.20 (a).

3.22 The fixed penalty process will be managed using back office IT systems, which will record full and accurate details of each fixed penalty notice from issue to closure. The systems enable the completion of all statutory returns required by the Secretary of State and enable the reporting of the number of fixed penalties issued, the number paid and the number of non-payments progressed to prosecution.

3.23 The Council will use fixed penalty receipts from offences created or amended by the Clean Neighbourhoods and Environment Act 2005 in accordance with DEFRA guidance. A full system of cost accounting shall be maintained to demonstrate compliance with the legislation.
4 Key Policies

4.1 Vulnerable Adults

4.1.1 If there is any doubt, or it is brought to the investigating officers attention, that the person, who has committed an offence is not capable of understanding that their actions constitute an offence, are mentally impaired in any way or are clearly unable to pay (eg homeless or otherwise) then a fixed penalty notice will not be issued. An educative approach may be taken or the individual asked to rectify their actions under such circumstances.

4.2 Young People:

4.2.1 Fixed penalty notices will not be issued to children below the age of 10.

4.2.2 For youths between 10 and 15 a warning will be issued for a first offence and the matter reported to their parents or guardians. Only where an officer has evidence to confirm that the young person has been previously warned will consideration be given to the issuing of a fixed penalty notice. In the event of any doubt, the officer will seek the advice of the Youth Offending Service.

4.2.3 In respect of 16 and 17 year olds, the rule for 10 to 15 year olds applies. In situations where fixed penalty notices are issued, the Youth Offending Team will be notified and the offender will be informed of this at the time of the incident.

4.2.4 In all cases, where a fixed penalty notice is issued to juveniles then this shall only take place in the presence of their parent or legal guardian.

5 Strategy Review

5.2 This strategy shall be reviewed on an annual basis, or at such times as deemed appropriate.

5.3 This strategy shall be published on the St Helens Council Website allowing members of the public and business to have the opportunity to comment on the policy and to provide feedback.

5.4 A record of amendments to the policy shall be maintained within this document.
# Fixed Penalty Notice Enforcement Strategy Control Sheet

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<th>Author</th>
<th>Details of amendments / changes</th>
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