

# Horsham District Council

## Policy for issuing Fixed Penalty Notices

September 2017

## **Fixed Penalty Notices issued by Horsham District Council**

Fixed Penalty Notices (FPN) were introduced to local authorities as a means to deal with criminal offences such as littering, graffiti, dog fouling and breaches of a Public Spaces Protection Order as an alternative to a prosecution in the criminal courts. Offences where a FPN can be issued are set out in the table below.

An offender will be issued with a FPN if the Authorised Officer investigating the matter is satisfied that a criminal offence has been committed and that there is sufficient evidence to prosecute the offender in a criminal court. Penalties will vary according to the offence.

### **Situations where a FPN may be issued**

Code	Offence	Legislation	Fixed Penalty within 15 days	Fixed Penalty within 29 days	Maximum Penalty on Conviction
1	Depositing litter	S.88 Environmental Protection Act 1990	£50	£75	£2,500
2	Waste Deposit Offence	S.33ZA Environmental Protection Act 1990	£250	£400	5 years prison and/or unlimited fine
3	Unauthorised distribution of free printed matter on designated land	Schedule 3A, paras. 1(1) and 7 Environmental Protection Act 1990	£50	£75	£2,500
4	Breach of Public Space Protection Orders (PSPO)	S.68 Anti-Social Behaviour Crime & Policing Act 2014	£80	£100	£1,000 (s67) £500 (s63)
5	Breach of Community Protection Notice (CPN)	S.52 Anti-Social Behaviour Crime & Policing Act 2014	£60	£100	£5,000
6	Failure to furnish written descriptions of waste (written information)	S.34A (2) Environmental Protection Act 1990	£180	£300	£5,000 (or an indictment and unlimited fine)
7	Failure to produce Authority (waste carriers licence)	S.5B Control of Pollution (Amendment) Act 1989	£180	£300	£5,000
8	Failure to comply with a waste receptacles notice (Commercial)	S.47ZA AND S47ZB Environmental Protection Act 1990	£60	£110	£1,000
9	Nuisance Parking	S6(1) Clean Neighbourhoods & Environment Act 2005	£60	£100	£2,500
10	Abandoning a Vehicle	S.2A Refuse Disposal (Amenity) Act 1978	£120	£200	£2,500 and / or 3 months in prison
11	Graffiti and fly posting	S.43 Anti-Social Behaviour Act 2003	£50	£75	£1,000 to £5,000
12	Failure to display no smoking signage in a smoke-free premises	S.6 Health Act 2006	£150	£200	£1,000
13	Smoking in a smoke-free place	S.7 Health Act 2006	£30	£50	£200

Receiving a penalty notice does not mean that the offender has received a criminal conviction. The FPN is given instead of a prosecution in court. If an offender receives a FPN, they have 15 calendar days to pay the penalty or to request a hearing. Offences offer a lower penalty if paid within 15 days. Failure to pay a penalty may result in a higher fine imposed by the court or imprisonment.

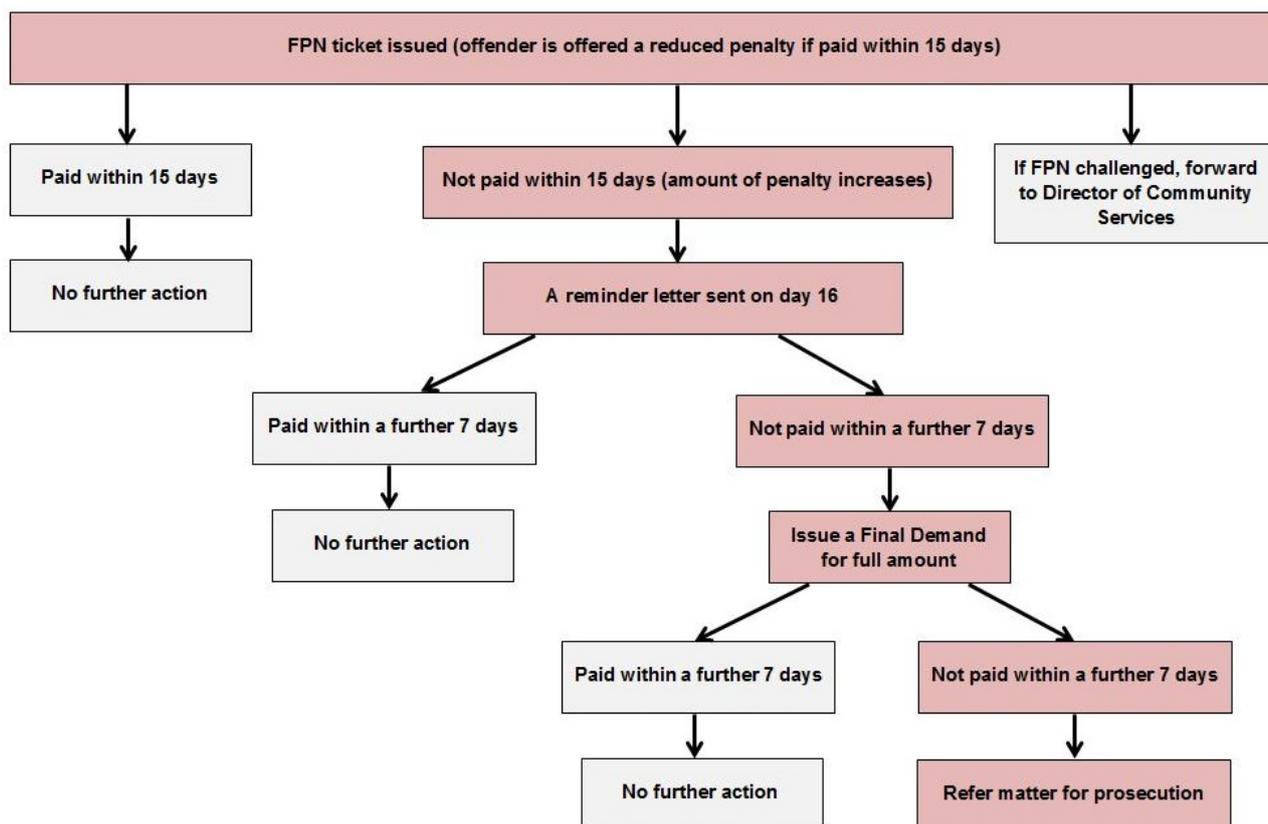
### **Procedure for issuing Fixed Penalty Notices**

- Authorised officers of the Council will only issue a FPN where they consider that there is adequate evidence of an offence that will support a prosecution in court.
- Should the case proceed to court the Council will, in addition to any fine imposed, seek to recover its costs associated with the prosecution. The Council retains the right to review any FPN issued before prosecuting. However, in most cases the Council will proceed to prosecute for non-payment of FPNs.
- The Authorised Officers of the Council will investigate whether an offence applicable for a FPN has taken place. If the Authorised Officer is satisfied that there is sufficient evidence to issue a FPN, it will be issued.
- Where the offender refuses to give his/her details to an Authorised Officer during an investigation, an offence of obstructions is committed, and the offender will be reported (where practicable) for the original offence and the further offence. The Council will also seek assistance from the Police in ascertaining an offender's identity.
- In the event that a FPN remains unpaid after the expiration of 15 days then a reminder letter will be sent to the offender. If it remains unpaid 7 days after that then a final demand will be sent. Where an offender fails to pay the full amount due under the FPN after this period, the Council may consider prosecuting the offender.
- Where the identity of the offender is unknown, the Council will make enquiries to establish that person's identity and take the enforcement action appropriate.
- FPN's will not be issued to persons under the age of eighteen, however a warning letter may issued and with the young person's parents or guardian informed of the offence. Depending upon the seriousness of the offence other interventions (including court action) will be considered by Legal Services.
- Only an Authorised Officer who is authorised by the Council may issue a FPN and must carry with them at all times their Authorisation Card, signed by the Chief Executive, which displays their photograph, name and title together with the wording:

#### **AUTHORITY TO ISSUE FIXED PENALTY NOTICES**

This is to certify that the Officer whose photograph is shown overleaf has been authorised by Horsham District Council to issue Fixed Penalty Notices for environmental offences; breaches of a PSPO; to enforce District Byelaws; and require the name and address of persons believed to be committing a relevant offence.

## Fixed Penalty Notices – process chart



### **What information is contained in the FPN**

FPNs must state all of the following:

- The alleged offence, for example, littering or graffiti.
- Where and when the offence took place.
- How the FPN has been issued (in person or by post).
- The fine imposed (and if there's a discount for paying early).
- When the fine must be paid by (this must be at least 15 days).
- How the fine can be paid.

### **What happens if there is a failure to pay the FPN?**

The offender is very likely to receive a summons to attend a Magistrates' court hearing for the offence they received the FPN for.

### **What happens when a FPN is paid?**

Payment of a FPN means that no further action will be taken for that particular offence.

### **What happens if a person wishes to challenge the issue of a FPN?**

Authorised officers of the Council will only issue a FPN where they consider that there is adequate evidence of an offence that will support a prosecution in court. However, if it is believed that the offence in question did not take place or that the issue of the FPN was incorrect, a challenge to the Director of Community Services can be made along with opting not to pay the FPN and attending court, if summonsed, to present the case.

Should the case proceed to court the Council will, in addition to any fine imposed, seek to recover its costs associated with the prosecution. The Council retains the right to review any FPN issued before prosecuting. However, in most cases the Council will proceed to prosecute for the non-payment of FPNs.

### **What happens to the FPN payments?**

Monies received from FPNs will be re-invested by the Council to help fight Environmental Crime and to maintain a cleaner, safer environment within the district.

### **How payment can be made**

Payment may be made as follows:

1. Online at: [www.horsham.gov.uk](http://www.horsham.gov.uk) and then follow the links from 'online payments' quoting the notice reference number.  
Payment will be accepted with the following debit and credit cards: Switch, Solo, Visa Delta. Visa, Mastercard.
2. By debit or credit card by telephoning 01403 215054 with your card details and quoting the notice reference number.

### **Data Retention**

The Council will keep records of the FPNs issued, from issue through to payment or prosecution, (along with any evidence) in case the FPN goes to court. These records will be held and disposed of securely in line with Data Protection principles.

### **Policy Review**

The policy will be reviewed annually by the Director of Community Services. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

This Policy was adopted by the Council at the meeting of the Cabinet held on XXXXX 2017.