

FINES AND PROSECUTIONS (INC. DOG FOULING)

Committee name	Public Safety and Transport Select Committee
Officer reporting	Joanne Howells – ASB & Environment Team Leader
Papers with report	Appendix 1 – FPN Offences
Ward	All

RECOMMENDATIONS:

That the Public Safety and Transport Select Committee note the contents of the report.

SUPPORTING INFORMATION

1. The Clean Neighbourhoods and Environment Act 2005 extended and amended powers available to local authorities to tackle environmental crime. The Act extended the use of fixed penalty notices (FPN's) across a range of environmental offences with an increasing emphasis on their use as a key means of tackling such offences. FPN's provide a quick, visible, and effective way of dealing with low level straightforward environmental crimes and an alternative to prosecution. This role is performed by external Contractors employed on behalf of Hillingdon Council. The current contract is with APCOA.
2. The Anti-Social Behaviour, Crime and Policing Act 2014 allow local authorities to tackle anti-social behaviour by the introduction of Public Spaces Protection orders (PSPO's). (All dog control orders are now under this Act.)
3. A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt but removes the possibility of the creation of a record of criminal conviction. The framework in place is to ensure that offenders will be prosecuted if they choose not to pay the FPN. This gives a powerful message to the community that such crimes will not be tolerated.
4. FPN's should not be used in isolation; they are just one method of enforcement which ranges from words of advice through to prosecution. Their use should be supported by education and campaigning strategies around environmental crime. Their use should be targeted appropriately. Targeting will achieve the best results in that it is more likely to catch perpetrators, create an improvement and attract public support.
5. Only officers who have delegated powers and authorised in writing can issue FPN's on behalf of Hillingdon Council. Such authorised officers must always carry with them the

relevant authorisation/identification. Whilst it is not a strict requirement and whilst there may be occasions when officers issue FPN's out of uniform it is considered good practice that the issue of an FPN is by an enforcement officer in uniform. This may differ for members of the Anti-social Behaviour and Environment Team who do not have a designated uniform.

6. There are several different offences which can be dealt with by authorised officers, as follows:
 - Nuisance parking
 - Abandoning a vehicle
 - Litter
 - Fly tipping
 - Street Litter Control Notices and Litter Clearing Notices
 - Unauthorised distribution of literature on designated land.
 - Failure to produce a Waste Transfer Note
 - Waste receptacles
 - Graffiti and fly posting
 - Breach of Public Spaces Protection Order
7. Enforcement officers exercise discretion and consider each set of circumstances when reaching a decision as to whether the issue of a FPN is appropriate. They rely upon professional judgement and operate within guidelines to exercise a balance between education and enforcement.
8. An FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient and appropriate evidence to a criminal standard of proof to support a prosecution in court, should the penalty notice go unpaid. They are designed to deal with low level offending only. When the nature or extent of the offence is so serious that the issue of an FPN would bring the system in to disrepute, prosecution should be considered instead.
9. In most circumstances offences resulting in an FPN will be witnessed directly by the officer, albeit that an officer may consider it appropriate to issue an FPN when they have not directly witnessed the offence but has reliable witness testimony and/or supporting evidence. Any interview and questioning must be consistent with the practice and procedures established by code C of the Police and Criminal Evidence Act 1984.
10. There are occasions when those who have received an FPN fail to modify their behaviour and commit further offences. As one of the purposes of an FPN is to change offending behaviour, generally an FPN should be regarded as a "once only offer". In cases where an

offender commits the same offence on a second occasion it is reasonable to argue that the original FPN has failed to have the desired effect and that prosecution is the most appropriate course of action. If an officer has reason to believe that an offender has been dealt with by way of an FPN on previous occasion, the appropriate course of action may be to issue another FPN but no more than 3 for the same offence or seek prosecution for the offence.

11. An FPN should only be issued where the alleged offender is compliant and able to understand fully what is going on and where there is sufficient evidence of identification and address. Where a person is uncooperative, threatening abusive or violent consideration should be given to alternative methods of disposal, (e.g. prosecution and or police involvement). If an offender gives false details or they are suspected to be false or refuses to give them and subsequently their identity is established, the offence should normally be pursued by prosecution, where practicable, rather than with an FPN.

12. There are circumstances where an FPN is not appropriate:

- Where there is insufficient evidence to support prosecution for the original offence in the magistrate's court should the FPN go unpaid
- Where the offence that has been committed is too serious in scale or effect the merit of an FPN
- Where the offence that has been committed is so small or trivial in its effect that action might not be in the public interest.
- Where the suspect appears to be unable to understand what is being issued to them and where there is any doubt about their ability to understand English
- Where the suspect's behaviour suggests they have learning disabilities or a mental disorder.
- Where the suspect is drunk or under the influence of drugs
- Where the suspect is a non-resident foreign national
- Where there is no satisfactory address for enforcement purposes, for example where the suspect is homeless.

13. The issuing of FPN's to young people below 18 years is complex. In law, a local authority FPN can be issued to anyone over the age of 10. Parents and guardians are not responsible in law for paying for FPN's issued to young offenders. However, a court can order the parents/guardians to pay any fine it may impose.

14. In dealing with an alleged young offender the name, address, age, and date of birth of the person should be obtained, together with the name and address of his/her parents or legal guardian. No interview should be undertaken of any young person under the age of 17

without the presence of a responsible adult. An FPN must not be issued to anyone who is under 10 years of age.

15. FPN's may be issued on the spot by enforcement officers and indeed this is generally the preferred and most appropriate method. However, there are occasions when the officer considers that this is not the most appropriate method, and they may issue a warning or words of advice or decide that prosecution is the more appropriate course of action.
16. An FPN should not be issued unless the officer believes there is sufficient evidence to support a successful prosecution. As such, the FPN and accompanying statement should include all the points required to prove the offence.
17. Enforcement officers are aware that if they wish to question an alleged offender over and above asking for name, address, date of birth and in the case of dog fouling, to confirm if a dog is with a particular person, and they may want to use any of the answers in any subsequent prosecution, then they must verbally issue the caution.
18. Obtaining the correct identity of an alleged offender is key to the process of issuing an FPN. Under section 7 of the Clean Neighbourhoods and Environment Act 2005 an authorised officer proposing to give a person an FPN may require the person to give him his/her name and address. A person commits an offence if he/she fails to give his/her name and address when required to do so, or he/she gives a false or inaccurate name and address.
19. Whilst this is a useful power, in practice it may be difficult for an enforcement officer to know when false details have been given. Albeit that experience will usually alert an officer it is good practice therefore to seek from an alleged offender some means of identification that supports the details they have given. However, Enforcement Officers have no legal powers to demand provision of such personal details, it is merely a request and therefore can only offer an FPN when they are confident the correct details have been provided.
20. If there is any doubt over someone's identity, they should not be offered an FPN at the time. Rather the enforcement officer should see if it is possible to verify the individual's identity. If following further enquiries, it turns out that the alleged offender was providing the correct details then an FPN can be issued retrospectively. If it transpires false details were provided and the enforcement officer establishes the correct identity, then consideration will be given to prosecution of the alleged offender 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.

21. **Appeals and Payment Procedure** - The recipient may decide to write in, email or telephone to plead mitigation or contest the FPN. The person should be advised that there is no obligation to pay the fine if he/she wishes to contest it. However as there is no formal appeals procedure the only appropriate place to challenge FPN is the magistrate's court.
22. Notwithstanding the above and the fact that there is no appeals procedure, the ASB service manager whose staff are authorised to issue FPN's may cancel any FPN following a review of the circumstances.
23. If the FPN remains unpaid after 14 days, the Local Authority may pursue a prosecution at Magistrates Court for the original offence for which it was issued. A database system is in place which monitors all FPNs from issue through to payment or prosecution.
24. The below table is an overview of the latest figures.

Offence	Aug – Dec 2020	Jan – Dec 2021	Jan – 14 March 2022
Failure to comply - waste receptacle notice (s46)	1	1	0
Failure to comply -waste receptacle notice (S47)	1	1	2
Graffiti	1	0	2
Failure to produce trading licence on demand	3	19	0
Contravention of trading/temp licence	4	30	11
Unlicensed street trading	5	43	8
Wilful obstruction of a highway	5	311	25
Unauthorised deposit of waste	39	19	6
Failure to produce waste documents	70	33	6
Abandonment of vehicle	0	1	0
Failure to comply with Community Protection Notice	0	1	1
Unlicensed Commercial activities	0	2	1
Depositing on a highway causing danger	0	2	0
Failure to secure removal of builders' skip	0	3	0
Distribution of free printed matter	0	3	0
Failure to comply with conditions of a skip	0	8	0
Erect scaffold/other structure without licence	0	8	5
Fly posting	0	10	4
Resisting/obstruction of authorised officer	0	14	0
Depositing anything on a highway	0	14	3
Failure to secure marking of builders' skip	0	15	0
Contravention of trading licence on demand	0	17	0
Smoking in a smoke free zone	0	40	21
Failure to secure lighting – skips	0	43	0
Depositing builders' skip without permission	0	150	2
Painting/inscribing/affixing on tree/council structure	0	204	97
Displaying advertisement in contravention	0	204	26

Depositing litter	379	555	219
Failing to comply with PSPO	310	506	338
Idling vehicles	228	245	303
TOTALS	1046	2526	1080

25. The impact of Covid on the footfall around the Borough saw a decline in the issue of FPN's and changes in the types of offences committed. Alternative strategies and offences were introduced to support the contract and deal with emerging and changing trends. Below is a snapshot of the previous 7 months.

FPNs per month	Total Issued	% compared to previous
Aug-21	280	25.00%
Sep-21	261	-6.79%
Oct-21	199	-23.75%
Nov-21	230	15.58%
Dec-21	280	21.74%
Jan-22	320	14.29%
Feb-22	261	-18.44%

26.

Implications on related Council policies

A role of the Select Committees is to make recommendations on service changes and improvements to the Cabinet who are responsible for the Council's policy and direction.

How this report benefits Hillingdon residents

None at this stage, pending any findings by the Committee and any recommendations forwarded to Cabinet.

Financial Implications

It is important that the Committee considers cost effective proposals that benefit resident taxpayers, which would ultimately be determined by Cabinet as part of the Council's broader budget planning process.

Legal Implications

None.