



**Briefing 15-35**

**July 2015**

## **Litter enforcement and fixed penalty notices: Adopting a sensible approach**

To: All Chief Executives, Main Contacts and APSE Contacts in England

For information only to Scotland, Wales and Northern Ireland

### **Key Issues:**

As part of our summer briefing series on environmental issues, APSE has produced this briefing on:

- the most recent UK Government and Department for Environment, Food and Rural Affairs (Defra) guidance on litter enforcement and fixed penalty notices
- recommendations from the Communities and Local Government Committee on the future for fixed penalty notices

### **1.0 Background**

Fixed penalty notices for littering (FPNs) were originally introduced under Section 88 of the Environmental Protection Act 1990. Best estimates by the Communities and Local Government Committee suggest that litter costs the taxpayer between £717 and £850 million per year, with the amount of certain types of litter (e.g. fast-food) increasing by 20% over the past year. A [recent news article](#) from the BBC illustrated how a fixed penalty notice over an orange peel might end up costing Broxbourne Borough Council and the taxpayer up to £8,000. This briefing has been prepared to give guidance to local authorities on the sensible use of FPNs and outline recent recommendations for better reporting mechanisms and associated changes.

### **2.0 UK Government guidance**

The UK Government recently released [guidance for enforcement officers issuing fixed penalty notices](#) (March 2015). With regards to issuing fixed penalty notices for litter, this guidance is a condensed and updated summary of a more detailed document produced by Defra in 2007, [Local environmental enforcement guidance on the use of fixed penalty](#)

[notices](#) Both documents offer useful advice for dealing with intentional versus unintentional instances of littering. The more recent guidance notes that a strict interpretation of section 87 of the Environmental Protection Act 1990 suggests that an FPN should not be issued if:

- littering is done accidentally,
- if it's not in the public interest to do so, or,
- if the offence is trivial.

The guidance encourages some leniency and suggests you should only issue FPNs where there is evidence of intent and you should give offenders a chance to pick up their litter before you issue an FPN. This approach is taken, for where there is no clear evidence of intent to drop litter, or when an offence is trivial, it may not be in the public interest or in the interest of the local authority (e.g. public/media perception) to issue a fixed penalty notice. Defra also separately noted that the public are generally supportive of the use of FPNs "provided they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems". A typical scenario for those issuing fixed penalty notices in a practical way is described in the section below.

**"A practical way to deal with such situations, where there is doubt over intent, is for the enforcement officer to challenge the person and to state that they have seen them drop something and to ask them to pick it up. Should the individual refuse to pick up the litter then there would be more sustainable grounds for issuing a fixed penalty notice and pursuing prosecution, should the fixed penalty notice go unpaid."** – Defra Local environmental enforcement guidance on the use of fixed penalty notices (2007) , page 46

### **3.0 Best practice from local authorities**

A good example of how to clarify what constitutes littering and how to encourage compliance is to introduce a **frequently asked questions** section on your Council's

website. [Thanet District Council's](#) website offers a good practice example of this with questions such as:

- What if there weren't any bins around where I was fined?
- I received a Fixed Penalty Notice for dropping a cigarette butt, surely they don't count as litter?
- Why should I pay if there were no signs about littering or dog fouling in the area?

#### **4.0 Recommendations for Fixed Penalty Notices by the Communities and Local Government Committee**

A [recent report](#) by the Communities and Local Government Committee on Litter and fly-tipping in England noted:

- An assessment is needed as to whether the maximum £80 for fixed penalty notices for litter should be increased ("to both encourage local authorities to make greater use of FPNs and to provide additional resources to remove litter")
- Since Government data collection on FPNs ceased in 2008/09, it is difficult to make an assessment of the effectiveness of FPNs in meeting the policy objective to deter littering
- The need for the creation of a national litter strategy for England "with a clear framework for action, underpinned with a coordinating role for local councils"

#### **5.0 Useful resources**

- UK Government Guidance – Enforcement officers: issuing fixed penalty notices – [click here](#)
- Defra: Local environmental enforcement – Guidance on the use of fixed penalty notices – [click here](#)
- Defra: 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 – [click here](#)
- Litter and fly-tipping in England – House of Commons Communities and Local Government Committee, 2015 – [click here](#)
- The Effectiveness of Enforcement on Behaviour Change: Fixed penalty notices from both sides of the line – Keep Britain Tidy, 2011 – [click here](#)

- Guidance on the use of Fixed Penalty Notices – Northern Ireland’s Department of the Environment, 2012 – [click here](#)

## **6.0 APSE Comment**

The appropriate use of Fixed Penalty Notices is critical as FPN’s are an important tool in the resources available to local authorities for dealing with litter. The recent news story mentioned previously has shown how their use can backfire on a local authority if the issuing of an FPN is not perceived by the public and the media to be even-handed or in the public interest.

APSE believes that the lack of a national standard for training on fixed penalty notices is an issue, as this leads to a wide variation in the interpretation of how and when they should be issued, which can lead to a perceived unfairness of certain local authorities over others (or even within certain public bodies within the same boundaries – e.g. local authority and police). Without a coordinated approach between everyone delivering fixed penalty notices, this can undermine the overall power and effectiveness of the scheme. The recent UK Government and Defra guidance mentioned within this briefing note, aims to encourage individuals with the power to issue FPNs to have some leniency and sensitivity, when considering issuing an FPN. It is therefore hoped that this will be reflected in future training and refresher courses for responsible officers to ensure a uniform approach is taken when issuing FPN’s.

As noted by Keep Britain Tidy, FPN’s are not a shortcut to happier communities and should therefore only be used to reinforce good behaviour in the last instance of their three E’s strategy approach, these being: education, engagement and enforcement.

Through understanding what an area’s environmental problems are and the reasons why they exist, the most sensible approach may be not to rely too singularly on fixed penalty notices to solve litter problems. As mentioned by the Communities and Local Government Committee, the total sum of all FPNs issued would be a “drop in the ocean compared with the total amount spent on clearing litter”, so local authorities should explore how the service could be delivered differently or how procurement (e.g. cigarette bins) may be more effective in tackling the issue and more cost effective than engaging in staff training and staff provision (or the contracting of private companies) for the issuing of FPNs. This is borne

out by [Keep Britain Tidy research](#), which found that those issued with FPNs, tended to only alter their behaviour in the short term, whilst in the longer term they became more self-conscious and secretive when littering, thus making them 'better' at offending.

APSE would encourage everyone involved in the issuing of FPNs and litter enforcement in general to consider the guidance mentioned above and evaluate how closely you and your department currently follows it and whether in light of this advice, you need to adopt a more realistic approach when taking the actual decision to issue FPNs.

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