

**FIXED PENALTY NOTICES
(Report by Head of Environmental Health Services)**

1. INTRODUCTION

- 1.1 The purpose of this report is to seek delegated authority for officers to issue fixed penalty notices in respect of relevant offences under the Anti-Social Behaviour Act 2003 (the 2003 Act) and the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act) and other applicable legislation and to agree an enforcement strategy including the use of non-employees.

2. BACKGROUND INFORMATION

- 2.1 In May 2004 Huntingdonshire District Council's Cabinet received a report from the Director of Operational Services about the implications of the 2003 Act. Recommendation 5.2 was that a further report should be submitted to Cabinet relating to the implementation of fixed penalty notices. In August 2005 the Cabinet received another report; this time about the implications of the 2005 Act. This report also contained a recommendation (5.4) that a further report should be submitted to Cabinet relating to the implementation of fixed penalty notices.
- 2.2 There are various pieces of legislation that allow the authority to enforce against environmental crimes. Powers have been available within the Environmental Protection Act 1990 but now there are also provisions under the 2003 Act. Part 6 of the Act contains supplementary provisions for dealing with issues such as graffiti, litter, waste and fly-posting. There are also provisions due to come into force under the 2005 Act.
- 2.3 A Fixed Penalty Notice (FPN) is simply one tool for achieving changes in anti-social behaviour. The advantage of FPNs is that they can reduce the bureaucracy and thus the overheads in formally dealing with certain types of offences. However, the use of FPNs involves a significant business process change.
- 2.4 The use of this type of enforcement is a specialist area; officers need to be trained and competent in both the interpretation of the relevant law and conduct of the process. If appropriate, ie in the case of repeat offences, criminal prosecutions can still be taken.
- 2.5 Huntingdonshire District Council currently has very few employees authorised to serve fixed penalty notices. The Animal Welfare and Pest Control Manager and the part-time Dog Warden are both authorised to serve FPNs for dog fouling offences (under the 1996 Act - however, this Act is due to be repealed when the 2005 Act is commenced). As well as direct employees there are others authorised to serve FPNs in Huntingdonshire. The 24 Police Community Support Officers (PCSOs) are also authorised to serve FPNs for dog fouling offences. There is also a local agreement with the Oxmoor Community Board. Under that agreement Huntingdonshire Housing Partnership (HHP) wardens in the area will seek witnesses to dog fouling offences and, where there is

appropriate and sufficient evidence, ask the Council's Dog Warden to serve a FPN on the alleged offender.

- 2.6 In addition to dog fouling other offences have been considered for FPNs. An officer employed by Cambridgeshire County Council was recently (September 2005) seconded to the Operational Services Division for a short time with the express purpose of raising the profile of the use of FPNs to control littering.

3. IMPLICATIONS - OPERATION OF THE SCHEME

- 3.1 Evidence of the need for fixed penalty notices as an extra tool for punishing criminal anti-social behaviour or environmental crimes has been considered by officers.
- 3.2 This research suggests that there may be limited benefit in the use of FPNs for those leaving graffiti. There are two reasons for this: the small-scale vandalism with a marker-pen is rarely detected at the time of the offence so there is seldom an identified perpetrator on whom to serve a notice; the perpetrator of larger scale graffiti, where the perpetrator may be traced via an identifiable tag would not be suitable for an FPN. If a tag is traceable it cannot be a first offence, repeat offenders should not be eligible for FPNs.
- 3.3 Other enforcement regimes; for example for offences such as dog fouling; have a history of using FPNs as one of the enforcement tools. There are two areas where the introduction of FPNs is expected to be a valuable enforcement tool. The first is littering. Littering is the deposit of waste in the open air so litter may range from a crisp packet to a bin-bag full of refuse. The second is fly-posting. Fly-posting is a growing problem in Huntingdonshire, with hundreds of signs/posters removed every month by the Operations Division.
- 3.4 If a FPN scheme is adopted an offender has an opportunity to discharge any liability for a conviction for an offence by the payment of a Fixed Penalty. The penalties are specified in the relevant Acts and they vary with the offence. Under the Clean Neighbourhoods and Environment Act 2005 there is also scope for the local authority to specify the level of some penalties.
- 3.5 There are currently no trained officers employed by the authority who are available to serve FPNs for littering or fly-posting. Formal training will need to be provided for anyone intending to issue FPNs. There is also an opportunity for non-employees to issue FPNs, if they are trained and authorised. Each parish council and town council may issue FPNs, if they chose to, for certain offences. If a parish or town council chooses to do this there is every chance they may retain the receipts. The parish and town councils within Huntingdonshire have been consulted and so far of 27 who have replied 6 are interested in pursuing parish-based enforcement. Within those parishes who have decided that parish-based enforcement is not appropriate for them at the moment there may be volunteers willing to be trained and authorised to act on behalf of Huntingdonshire District Council. In addition HHP wardens, PCSOs and Neighbourhood Watch representatives have been approached about the notion training to issue FPNs on behalf of the Council.

- 3.6 By training and using PCSOs and other interested parties as evidence gatherers the Council could pursue the use of FPNs as an enforcement tool while minimizing any need to increase staffing levels. However, the effective use of non-employees would depend on supervision and co-ordination. This supervision should be undertaken by an experienced officer skilled in enforcement/anti-social behaviour issues. The tasks would not demand full-time attention but may mean that the role should be added to existing duties, this may require a re-evaluation of the salary for such a post.
- 3.7 An implied duty to prosecute arises for those who do not pay the fixed penalty in the allowed time. This authority does not have the capacity to increase the volume of prosecutions it handles in any one year.
- 3.8 There is a limited potential for revenue to be generated by issuing FPNs. At this stage, it is too early to quantify the levels of activity, the subsequent income or the costs of prosecuting those offenders who do not pay. The revenue collected from FPNs associated with dog fouling offences has been only £625 in total over the last 7 years. The cost of employing and/or training new enforcement or co-ordinating staff cannot be met from existing budgets.

4. CONCLUSION

- 4.1 There are increased enforcement powers included in the Clean Neighbourhoods and Environment Act 2005 for a variety of 'environmental crimes' and also powers to adopt alternative enforcement strategies for some offences, such as the use of fixed penalty notices.
- 4.2 There is an expectation that Local Authorities will become increasingly pro-active in resolving neighbourhood problems. Fixed Penalty Notices (FPN) may reduce the bureaucracy of formal action. However, the use of FPNs is a significant business process change.
- 4.3 Huntingdonshire District Council does not presently have sufficient trained staff to implement a comprehensive fixed penalty regime. There are opportunities to authorise suitably trained personnel who are not HDC employees provided their work is adequately supervised and coordinated.

5. RECOMMENDATIONS

- 5.1 Members are requested to approve the principle that, although some penalties may be set by the local authority, Huntingdonshire District Council will adopt the default penalty in the legislation, for the time being.
- 5.2 Members are requested to authorise the Director of Operational Services to appoint persons to issue relevant Fixed Penalty Notices (under the Environmental Protection Act 1990, the Anti-Social Behaviour Act 2003 and the Clean Neighbourhoods and Environmental Act 2005 and any subordinate legislation) on behalf of Huntingdonshire District Council.

BACKGROUND INFORMATION

Clean Neighbourhoods and Environment Act 2005

Anti-Social Behaviour Act 2003

Cabinet Report, 6 May 2004- Anti-Social Behaviour Act 2003

Cabinet Report, 1 September 2005 – Clean Neighbourhoods and Environment Act 2005

Draft Guidance on the Clean Neighbourhoods and Environment Act 2005: A Consultation Document; October 2005 www.defra.gov.uk

Code of Practice on Litter & Refuse: Consultation Document; October 2005 www.defra.gov.uk

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