



FIXED PENALTY POLICY

November 2012

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1.0 INTRODUCTION

Fixed Penalty Notices are a means of punishing offenders for unlawful behaviour and offer a quick, flexible means of dealing with certain offences. It avoids overloading the judicial system with unnecessary cases. They allow a person who admits to the committing of an offence to end the matter promptly, avoid Court action and the possibility of a criminal record.

Authorised Enforcement officers can issue Fixed Penalties for offences contained within the Clean Neighbourhoods and Environment Act 2005, the Health Act 2006 and the Environmental Protection Act 1990

2.0 PRINCIPLE

Mid Devon District Council is committed to providing a good local community for the public and protecting the environment.

As well as an enforcement tool the use of fixed penalty notices is intended to encourage behaviour change and bring improvements to local environmental quality and protect public safety.

Using Fixed Penalties brings with it a great deal of responsibility to ensure that the powers are used correctly, proportionately and lawfully – a responsibility that Mid Devon District Council takes very seriously.

At all times it must be remembered that the instances where the issue of a Fixed Penalty is considered, an offence indicative of a crime has been committed. The use of Fixed Penalties is a discretionary power and its use will take into account the proportionality of the offence or crime. Therefore, there will be occasions where an authorised officer will decide a Fixed Penalty will not be issued and the level of the offence or crime warrants a prosecution.

3.0 THE LEGISLATION AND OFFENCES

Clean Neighbourhood and Environment Act 2005

Offence of failing to clear up dog faeces anywhere within the area of Mid Devon

Offence of failing to put a dog on a lead when directed to do so by an Authorised Officer

Health Act 2006

Offence of smoking in a smoke free place

Offence of failing to display at least one legible no-smoking sign

Environmental Protection Act 1990

Offence of Littering

A Penalty can either be issued on the spot or through the post depending on the circumstances and type of offence. Enforcement officers will observe offences whilst on dedicated patrol, on a pure chance basis whilst engaged on other duties, or following an approach by members of public willing to stand as a witness in any subsequent Court action.

If a Fixed Penalty is not paid within the prescribed time limit, the authority will normally start prosecution proceedings for the original offence.

4.0 Penalties and Payments

Each Fixed Penalty Notice will contain details of the offence and the payment required. It will also have the address for Mid Devon District Council (MDDC) and the time limit for payment.

The table below shows the payment due for the given offence and the timescale for payment following the date of issue.

All days quoted are calendar days. If a 15th day for a Smoke Free FPN is not a working day, the reduced payment can be accepted on the next working day.

	Dog Fouling	Litter	Smoking	No-smoking sign	Dog on Lead
Up to 10 days	£50	£50	£30	£150	£50
Up to 14 days	£80	£80	£30	£150	£80
Up to 15 days	n/a *	n/a *	£30	£150	n/a *
Up to 29 days	n/a	n/a	£50	£200	n/a
After 29 days	n/a	n/a	n/a *	n/a *	n/a

Payments can be made on-line, over the telephone, through the post or in person

* denotes the time from when an unpaid Penalty will be considered for prosecution.

5.0 PROCEDURE

Where an authorised officer witnesses an offence, they will, if possible, approach the offender and identify themselves as an Enforcement Officer for Mid Devon District Council and show an identity card. The officer may be in uniform but sometimes patrols are undertaken in plain clothes, at all times an identity card is carried. The offence observed will be explained and the offenders details taken. If the use of a Fixed Penalty is deemed appropriate, explanation will be given regarding the issue of a Fixed Penalty and its use as an alternative to prosecution and possible criminal record. An alleged offender may be asked to provide I.D. to confirm the personal details provided.

In some cases, for example litter thrown from a moving vehicle, an immediate approach is not possible so the Penalty will be sent in the post. MDDC can request assistance and information from the Police, DVLA, and other bodies to help with its investigations. In these cases, the Penalty will be issued as soon as possible with a full written explanation of the circumstances and procedure involved.

A Fixed Penalty will only be issued where it is both appropriate, in line with the Council's principle and Environmental policy. There will be a clear indication that an offence has been committed. There will be sufficient supporting evidence to enable a prosecution should the Penalty Notice go unpaid.

A Fixed Penalty Notice will not be issued if it is regarded as inappropriate or not in line with our principle above. Examples of this could include repeat offenders who should be considered for prosecution. Other examples might include un-cooperative persons, aggravating circumstances or where it is suspected the offender seems confused through impairment or drugs or alcohol. In cases like this, an Enforcement Officer will consider seeking support from other bodies such as the Police or another agency.

6.0 MINORS AND JUVENILES

A fixed penalty notice can lawfully be issued to anyone over the age of 10. However, in view of the complexity of the youth justice system, Mid Devon District Council will normally only issue fixed penalty notices to those over 17 years old. This authority is mindful of the welfare needs, legal issues and other concerns relevant to children and young people and is keen to ensure they are adequately observed.

In straightforward cases, where an Enforcement Officer deals with a person under 17 years old, they will obtain the child's details and the name of their parents or legal guardian at the time of the offence and if on enquiry it is decided that a fixed penalty is suitable, the fixed penalty notice will be issued to the offender personally with a parent or legal guardian present. If for any reason it is issued in writing, a responsible adult should be notified at the same time.

In the case of a person under the age of 17, in deciding whether a Fixed Penalty Notice is appropriate, this authority will consider whether the offender has received a fixed penalty previously or if a Reprimand, Warning or other sanction should be considered instead. We will also take into account his or her family circumstances and whether he or she suffers from other vulnerabilities.

7.0 PARTNERSHIPS

Mid Devon District Council issues Fixed Penalty Notices in partnership with Devon and Cornwall Police, and any other authorised personnel. All authorised officers use the same penalty notices.

8.0 ADVICE AND OTHER BODIES

Any person having had a Fixed Penalty served upon them can consider seeking independent advice on the matter from Citizens Advice Bureau or a solicitor.

Advice is also available from the website www.directgov.uk

9.0 COMMENTS AND COMPLAINTS ABOUT THE POLICY

The Council welcomes any comments, complaints, queries or suggestions about this Policy.
You should set out any such matters in writing to the following address

Paul N Williams

Head of Environmental Services

Mid Devon District Council

Phoenix House

Phoenix Lane

Tiverton

Devon EX16 6PP

The Council's complaints procedure is available for grievance against any actions or decisions taken by its officers.

10.0 POLICY REVIEW

The current policy will commence on 1/12/2012 and will be revised on an annual basis unless a change in legislation makes an interim review necessary.