



## **Section 2**

### **Street Scene**

### **FIXED PENALTY POLICY**

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## 1. 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 possibility of a criminal record.

Authorised Enforcement Officers can issue Fixed Penalties for offences contained within the Clean Neighbourhoods and Environment Act 2005 and the Environmental Protection Act 1990.

## 2. 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. 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.

## **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 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 offences. No proceedings will be taken for the offence before the expiration of 14 days following the date of the notice. The offender will not be liable to conviction for the offence if payment of the fixed penalty is received during the period of 14 days.

#### **4. 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 dates quoted are calendar days.

The Council currently insists on cash, credit card or card supported cheques for the full amount. Payments can be made on-line, over the telephone, through the post or in person.

The table overleaf shows the fixed penalty costs which will be issued.

Table to show Fixed Penalty costs

	<b>Dog Fouling</b>	<b>Litter</b>	<b>No-smoking</b>	<b>Dog on lead</b>	<b>Fly tipping</b>
<b>Up to 10 days</b>	-	-	£150	£50	
<b>Up to 14 days</b>	£150.00	£150.00	£150	£80	£150.00

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

## 5. 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 will be in uniform and 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 Fixed Penalty and its use as an alternative to prosecution and possible criminal record. An alleged offender may be asked to provide ID 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.

Where a witness alleges an offence, the enforcement authority should first interview the witness and obtain a statement. The offender should then be offered the chance to take part in an Interview Under Caution (I.U.C.) to have the evidence against them presented, and give them a chance to put their side of events / defence forward.

Following this a decision can be made if a FPN is should be issued, or if other action is more appropriate.

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. 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 for 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 reasons 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 vulnerabilities.

## **7. 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. Advice and other bodies**

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

Advice is also available from the website [www.directgov.uk](http://www.directgov.uk)

## **9. 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:

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.

## **9. Comments and complaints about the policy**

The current policy will commence 1 November 2016 and will be revised on an annual basis unless a change in legislation makes an interim review necessary.